

REMARKS

Reconsideration of the application is requested.

Claims 46-63 and 65-69 are now in the application. Claims 46-63 and 65-69 are subject to examination. Claims 46, 52, 62, 63, and 65 have been amended. Claims 64 and 70-72 have been canceled to facilitate prosecution of the instant application.

An RCE has been filed concurrently with this response.

Under the heading "Claim Rejections – 35 USC § 112" on page 2 of the above-identified Office Action, claim 52 has been rejected as being indefinite under 35 U.S.C. § 112, second paragraph.

In claim 52, the terms "a pre-product" have been replaced by "dimensionally stable, shaped bodies".

Support for these changes may be found by referring to claim 54, for example.

The optional step in claim 46 has been deleted.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, second paragraph. The above-noted changes to the claims are provided solely for clarification or cosmetic reasons. The changes are neither provided

for overcoming the prior art nor do they narrow the scope of the claim for any reason related to the statutory requirements for a patent.

Under the heading "Claim Rejections – 35 USC § 102" on page 2 of the above-identified Office Action, claims 46, 56-58, 61, 61, 70-72 have been rejected as being fully anticipated by Great Britain Patent No. GB 2228856 to Schiffmann et al. with evidence from U.S. Patent No. 5,756,140 to Shoop and U.S. Patent No. 6,063,413 to Houraney et al. 35 U.S.C. § 102. Applicant respectfully traverses.

The Examiner has alleged that a microwave is capable of baking because heating in a microwave will give hot air and is thus heating with air. Applicant disagrees. The radiation that is emitted by the microwave element in the microwave oven causes the molecules of the food product being heated to rotate. The rotating molecules create heat and warm the food product. The food product is not baked by hot air that is provided externally from the food product, but rather the molecules in the food product are rotated to produce heat inside the food product and warm the food product from the inside the food product. In fact Schiffmann must provide a special microwave susceptor in order to brown the food product. Schiffmann does not teach "baking".

In order to advance prosecution of this case however, applicants have amended claim 46. Support for the changes can be found by referring to the

specification at page 8, lines 34-36 and at page 19, line 20 through page 21, line 2.

Claim 46 now defines a step of heat-treating the intermediate product with hot air or infrared radiation in a baking oven at temperatures between 160°C and 290°C to produce a glossy, browned covering layer on the lye-treated sites.

Schiffmann et al. do not teach or suggest such a step.

Schiffmann et al. teach microwavable pre-products that are provided in “packaged brown and serve products”. Schiffmann et al. do not teach or suggest a browning treatment of the lye-treated products in a baking oven at temperatures of between 160°C and 290°.

Claims 62-65 have been amended to be consistent with the changes to claim 46.

Applicants will now further discuss the differences between a microwave and a baking oven. The Examiner has equated heating in a microwave oven with heating by means of hot air because he believes that a microwave oven generates hot air. The Examiner is of the opinion that

- 1) baking does not differ from a heat treatment if one does not name the apparatus used therefore, and

- 2) the term “baking” is generally known in the specialized field as baking in an oven or in a microwave oven which is proven by the documents Shoop et al. (US 5,756,140) and Houraney (US 6,063,413).

When interpreting the technical function of a microwave, applicants respectfully believe that the Examiner has made an error. For preparing meals, a microwave oven only generates microwaves and nothing else.

An appliance designated as a microwave, which generates hot air is a combination of a microwave oven and a convection oven and, in the case of such a device, one can chose between microwave, hot air and a combination of microwave and hot air. While operating with microwaves, the device only generates microwaves and while operating with hot air, the device only generates hot air. The combination of the use of microwaves and hot air is created by the continuous change between microwave operation and hot air operation. During the operation with microwaves, the microwave generator of the device is cooled with cooling air so that is does not overheat during its operation. This cooling air flows through the cooking space of the device without adversely affecting the state of the meal present in the cooking space.

With regard to claim 46, the Examiner - mainly objects to the linguistically somewhat imprecise designation of that measure that produces the browning of the lye-treated pre-product. The Examiner alleges that the term “baking” does not exclude a browning of the lye-treated pre-product in a microwave oven. In

doing so, however, applicants respectfully believe that the Examiner overlooks two essential points:

1. For browning in a microwave oven, a container containing the lye-treated pre-product and equipped with a microwave susceptor is required. This container, by means of its microwave susceptor that is activated by the microwaves of the microwave oven, ensures the browning of the lye-treated pre-product enclosed in the container.
 - a) Without a corresponding microwave susceptor, there is no browning in the microwave of the lye-treated pre-product enclosed in the container.
 - b) The container carrying the microwave susceptor is required because it ensures the correct spatial position of the microwave susceptor in the microwave oven compared to the lye-treated pre-product enclosed in the container.
 - 1.1 If the facts in item 1 were not true, Schiffmann's packaged brown and serve product would be unnecessary.
2. In accordance with the invention, the lye-treated pre-product of claim 46 (called an intermediate product in claim 46) is not packaged or enclosed in a container during the measure that produces the browning. The intermediate product is freely accessible so that in the case of the intermediate product, the heat generating the browning during the

baking of the intermediate product directly impinges upon the intermediate product and produces the browning there.

The heat sufficient for browning is provided in the baking oven by the radiation or convection heat generated by the baking oven, which, as hot air or heat radiation, directly acts upon the baking good.

These two points clearly show that:

- the browning method provided for the microwave oven does not work in the baking oven because there, there are no microwaves activating the microwave susceptor; and
- the browning method provided for the baking oven does not work with the packaged brown and serve product of Schiffmann et al. because the latter prevents the browning method provided for the baking oven.

The two browning methods are technically incompatible and can neither anticipate one another nor render one another obvious. The two points and the technical incompatibility resulting therefrom of the two browning methods are known by of one of ordinary skill in the art.

Under the heading "Claim Rejections – 35 USC § 103" on page 3 of the above-identified Office Action, claims 47-55, 59-60, 62-63, 66-69 have been rejected as being obvious over Great Britain Patent No. GB 2228856 to Schiffmann et al. under 35 U.S.C. § 103. Applicant respectfully traverses.

The invention as defined by claims 47-55, 59-60, 62-63, 66-69 is not obvious for the reasons given above with regard to the teaching in Schiffmann et al. and the invention as defined by claim 46.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 46. Claim 46 is, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 46.

The Examiner stated that claim 65 is allowable. Applicant appreciates the indication of Allowability; however the claim has not been rewritten in independent form at this time.

In view of the foregoing, reconsideration and allowance of claims 46-63 and 65-69 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of three months pursuant to Section 1.136(a) in the amount of \$1110.00 in accordance with Section 1.17 is enclosed herewith.

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Sterner LLP, No. 12-1099.

Respectfully submitted,

/Mark P. Weichselbaum/
Mark P. Weichselbaum
(Reg. No. 43,248)

MPW:cgm

August 7, 2009

Lerner Greenberg Sterner LLP
P.O. Box 2480
Hollywood, Florida 33022-2480
Tel.: (954) 925-1100
Fax: (954) 925-1101